IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2839 OF 2001

Mrs.Suteja Suresh Mathkar,)
an Adult, Female, Indian Inhabitant,)
Occupation : Service, residing at)
Saroj Sadan, 1st Floor,)
71, Dixit Road Corner, Nehru Road,)
Vile Parle (East), Mumbai 400 057.).. Petitioner

Vs.

1. Saroj Sadan Co-operative Housing)
Society Ltd., Saroj Sadan,)
Plot No.313, Nehru Road,)
Dixit Road Corner,)
Vile Parle (East),)
Mumbai - 400 057.)

2. The Divisional Joint Registrar,)
Co-operative Societies,)
Mumbai Division, Mumbai.)

3. The State of Maharashtra.).. Respondents

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Shri R.M.Parekh with Ms Smita Thatte and Amerjeet Yadav i/b Mr.Datta Gada for the Petitioner.

Shri J.S.Kini for Respondent No.1.

Shri Milind More, AGP for Respondent Nos.2 and 3.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 2nd SEPTEMBER, 2004.

ORAL JUDGMENT :

1. Heard the learned advocates for the parties.

Perused the records.

2. The petitioner challenges the order dated 28th November, 2000 passed by the Divisional Joint Registrar, Co-operative Society, Mumbai Division,

Mumbai, in Application No.78 of 2000, which was filed by the petitioner under Section 21-A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter called as "the said Act"), requesting for de-registration of the respondent No.1- society. By the impugned order, the said application was dismissed by the concerned authority.

3. The challenge to the impugned order is mainly on the three grounds. Firstly, that in terms of the provisions of law contained in Section 6 of the said Act relating to the requirement of the minimum number of 10 members for the purpose of registration of a society has not been satisfied in the case in hand besides there was misrepresentation in respect of the requirement of 10 members by showing more than one member from the same family as being independent and separate persons for the purpose of satisfaction of the requirement of minimum number of 10 members. Secondly, the authority, while granting registration and refusing de-registration of a society, misconstrued the circulars dated 1st March, 1980 and 10th March, 1995, which were issued by the Government in exercise of powers under Section 7 of the said Act. The authority also failed to consider as to whether the conditions stipulated under the said circulars were satisfied or not in the case in hand so as to grant registration to a co-operative society with less than 10 members. Thirdly, it is sought to be

contended that it was obligatory on the part of the registering authority to inquire into the facts relating to the compliance of requirements of law by the applicant in relation to the minimum number of required members for formation and registration of a co-operative society as well as other related matters in relation to the registration of a co-operative society, and, yet, the authority without undertaking any such exercise and without application of mind, not only granted registration but even refused to consider the application for de-registration. In short, the registration of the respondent No.1, as the co-operative society under the said Act, as well as rejection of the appeal filed under Section 21-A of the said Act by the concerned authority, has been done in contravention of the provisions of law, which warrants interference in writ jurisdiction.

4. Though the learned advocate for the respondent No.1 initially sought to justify the impugned order and also to contend about failure on the part of the petitioner to exhaust alternative remedy, drawing attention to the decision of the learned Single Judge of this Court in the matter of **Prabhu Shriram Sahakari Dudh Vyawasaik Sanstha Maryadit, Ahmednagar v. State of Maharashtra & Ors.,** reported in 1999(1) Mh.L.J. 619, but having realised the infirmities in the impugned order, fairly submitted that, while setting aside the impugned order, the matter may be remanded

to the Divisional Joint Registrar, Co-operative Societies at Mumbai, to reconsider the issue relating to the registration of the respondent No.1 as the co-operative society under the said Act, after hearing the parties and after taking into consideration all the materials which are placed on record by the parties in the case in hand as well as in the case before the authority during the course of hearing. The contention in relation to the remand of the matter was also supported by the learned Assistant Government Pleader, upon instructions from Shri Rajesh Kulkarni, Deputy Registrar, K-Ward (East). He submitted that the impugned order does not disclose proper application of mind to the matter in issue by the concerned authority while deciding the matter. Considering the submission for remand having been made on behalf of the State Government itself and the concerned authority, the learned advocate for the petitioner has also consented for the same.

5. In fact, as regards the contention regarding the availability of an alternative remedy, it is not necessary to deal with the same in view of the consent of the parties for remand of the matter. Be that as it may, the question of considering such an issue, at this stage, also does not arise as the objection in that regard ought to have been raised at the time of admission of the matter, and once the writ petition is admitted, the petitioner cannot be non-suited on the

technical ground of availability of alternative remedy.

6. As already observed above, in view of the consent of the parties, without expressing any opinion on merits of the case, the impugned orders in relation to the refusal of de-registration as well as in relation to the registration of the respondent No.1 - society are hereby quashed and set aside and the matter is remanded to the Divisional Joint Registrar, Co-operative Societies, Mumbai, Division, Mumbai, to reconsider the entire issue in relation to the application for registration of the respondent No.1 - society, after hearing both the parties and in accordance with the provisions of law. Needless to say that the authority will have to take into consideration whatever the circulars might have been lawfully issued by the Government in exercise of powers under the various provisions of the said Act. However, while considering the said circulars, it would be necessary for the authority to understand the contents of the said circulars and to take into consideration the facts of the case and to ascertain whether such circulars or any one of them apply to the facts of the case and accordingly to pass an appropriate order. It is also necessary for the authority to hear both the parties before passing any order in that regard and to take into consideration all the materials on record which the parties may

place before it. In case, the authority finds it necessary to investigate into the matter by exercising its own powers, which are available under the Act, the authority should not hesitate to exercise such powers available under the said Act and the rules thereunder and in accordance with the provisions of law thereof. The authority shall dispose of the matter, as stated above, as expeditiously as possible and, in any case, within a period of 12 weeks from the date of receipt of the writ of this Court.

7. Meanwhile, affairs of the respondent No.1 - society are to be managed by the Committee alleged to have been elected to manage the affairs of the society, subject, however, to that, such Committee shall not be entitled to take any major decision as also shall not be entitled to spend more than Rs.100/- (Rupees Hundred Only) per month from the society's funds. Needless to say that, meanwhile, the society shall not be entitled to enter into any dealing in relation to the properties of the society either by way of agreement for transfer or otherwise, or by way of enrollment of any other new member to the said society.

8. Rule is made absolute in above terms with no order as to costs.